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State v. Melendez Respondent's Brief Dckt. 43488

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43488
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-5438
)	
ALEXANDER STEVEN MELENDEZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Melendez failed to establish that the district court abused its discretion by imposing an underlying unified sentence of eight years, with one year fixed, upon his guilty plea to felony injury to a child?

Melendez Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Melendez pled guilty to felony injury to a child and the district court imposed a unified sentence of eight years, with one year fixed, suspended the sentence, and

placed Melendez on supervised probation for eight years. (R., pp.41-50.) Melendez filed a notice of appeal timely from the judgment of conviction. (R., pp.52-54.)

Melendez asserts his underlying sentence is excessive in light of “the nature of the offense, the character of the offender, and the protection of the public interest.” (Appellant’s brief, pp.3-7.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The penalty for felony injury to a child is not less than one year, up to 10 years in prison. I.C. § 18-1501(1). The district court imposed a unified sentence of eight years, with one year fixed, which falls well within the statutory guidelines. (R., pp.41-50.) At sentencing, the state addressed Melendez’s continued criminal offending, history of disregard for his legal obligations, minimization of his criminal conduct, risk to sexually

reoffend, and the recommendations from the presentence investigator and the psychosexual evaluator that treatment begin in a structured environment. (7/23/15 Tr., p.17, L.20 – p.21, L.16 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Melendez's sentence. (7/23/15 Tr., p.26, L.16 – p.31, L.19 (Appendix B).) The state submits that Melendez has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Melendez's conviction and sentence.

DATED this 7th day of January, 2016.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of January, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_____/s/_____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: Have you talked with your counsel
2 about whether there's any additions or corrections?

3 THE DEFENDANT: We just got the references that
4 were added on. That was the only thing.

5 THE COURT: Were for any additions or
6 corrections that you needed to discuss with your
7 counsel?

8 THE DEFENDANT: No. No, Your Honor.

9 THE COURT: Mr. Steveley, did you note any
10 additions or corrections?

11 MR. STEVELEY: No, Your Honor.

12 THE COURT: Is there any victim-impact statement
13 from either the minor or her mother?

14 MS. SLAVEN: No, Your Honor.

15 THE COURT: Or other parent or guardian, I
16 guess?

17 MS. SLAVEN: No.

18 THE COURT: All right.

19 Ms. Slaven, you can argue.

20 MS. SLAVEN: Thank you, Your Honor.

21 And, as a preliminary matter, we are requesting
22 a no contact order in this case with the minor victim
23 with no exceptions.

24 As the court did indicate, the psychosexual
25 evaluation came back as a moderate risk to re-offend, so

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1 like talking to her about using drugs and then the
2 conversation turned sexual in nature. He did know her
3 age at the time but did mention that he wanted to engage
4 in sexual acts with her. There were also, of course,
5 the pictures that were exchanged.

6 His version of the events in the PSI is
7 concerning to the state. He calls himself "a man of
8 worth who is always trying to expand his consciousness".
9 He goes on to say that he's steadfast "He has steadfast
10 obedience to the rules which he knows is right". This
11 does not seem in any way to be consistent with his
12 criminal history or the facts of this case. Of course,
13 it's not consistent with him seeking out this
14 15 year-old female and having these sorts of
15 conversations with her.

16 Also, his criminal record shows that he has
17 multiple misdemeanor convictions and had a significant
18 amount of trouble as a juvenile. Most concerning is
19 that he has a recent dispensing alcohol to a minor
20 conviction showing, of course, other ways that he's
21 criminally involved with minor children. It does appear
22 that he did very poorly in the juvenile system and made
23 several excuses for his failings in that regard. He
24 ultimately, it sounds like, didn't comply with many of
25 the court's orders to get help with the substance-abuse

19

1 our recommendation is a 1 plus 7 for 8, probation.

2 Specific terms of probation that the state would request
3 would be that the defendant not have any access to the
4 Internet or computers or Smart phones that have the
5 ability to connect to the Internet without prior
6 approval of his treatment provider or probation officer.
7 We would also ask that the court consider ordering no
8 contact with all minors as a condition of probation and
9 that the defendant not form any relationships with any
10 minors or anyone who has minor children or custody of
11 minor children as a condition of probation.

12 The plea agreement does leave the issue of time
13 in the Ada County Jail open for argument, so that's
14 where I would like to focus my argument. In this case,
15 we are asking the court to consider ordering 365 days in
16 the Ada County Jail, ordering the defendant to do the
17 SATP program while he's in custody, and then also,
18 perhaps, consider furloughs at some point for
19 sex-offender treatment and then later allow the
20 defendant to petition the court for early release after
21 he shows some progress in his treatment.

22 The reason for that recommendation, Your Honor,
23 is that we are dealing with, of course, a set of facts
24 where the defendant was chatting with the 15-year-old
25 victim on his cell phone. He was, at first, it sounds

18

1 issues. He never followed through with his financial
2 obligations in his criminal cases, and a lot of those
3 were turned over to collections.

4 He does clearly have a substance-abuse problem.
5 He abuses marijuana and alcohol. I am again concerned
6 by comments in the PSI. He's asked what his plan is to
7 stay off drugs and alcohol, and he indicates that his
8 plan is to "spend more time drunk off poetry, love and
9 everything that encompasses this beautiful thing called
10 life". It's these sort of comments, Your Honor, that
11 are concerning to me because it indicates to me that
12 he's not taking this seriously, and that he doesn't
13 really have very good insight into why he's before the
14 court and why he's being charged with a significant
15 felony offense.

16 The findings in the psychosexual evaluation are
17 extremely troubling to me. He is found to be at the
18 upper end of moderate risk to re-offend. Dr. Johnston
19 also indicates that he has anti-social and narcissistic
20 personality traits. There's talk of his minimization of
21 the crime in the psychosexual evaluation. Some of his
22 comments are concerning. Again, saying, "I didn't
23 target a child. I was wrongfully infatuated with her
24 behind", indicating that he loves children and he
25 believes in love and not being led astray from a

20

<p>1 virtuous life.</p> <p>2 Again, to me, this is signaling that he doesn't</p> <p>3 quite get, really, what's going on here or the</p> <p>4 significance of it, and doesn't have much insight into</p> <p>5 why he's here. His DSM IV is troubling. He is</p> <p>6 diagnosed with child sexual abuse and again anti-social</p> <p>7 and narcissistic traits. Dr. Johnston, as well as the</p> <p>8 PSI recommend, that, perhaps, treatment should start in</p> <p>9 a structured environment, and, if the court were to</p> <p>10 enter some time in the Ada County Jail and require him</p> <p>11 to do that and allow him to do treatment in the jail</p> <p>12 before he's released in the community, that would,</p> <p>13 perhaps, give the court some more confidence that he</p> <p>14 will take this seriously when he's released, and it</p> <p>15 would accomplish the recommendations that are in the</p> <p>16 psychosexual evaluation. Thank you, Your Honor.</p> <p>17 THE COURT: Mr. Steveley, would you like to be</p> <p>18 heard?</p> <p>19 MR. STEVELEY: Yes. Thanks.</p> <p>20 This is, obviously, his first and only felony as</p> <p>21 an adult. He is 24 years old. He has been an inmate</p> <p>22 worker while in custody. Comes from a large family. He</p> <p>23 has nine siblings. Enjoys good relationships with all</p> <p>24 of them. None have felony records either, as referenced</p> <p>25 in the presentence report. He doesn't have any contact</p> <p style="text-align: center;">21</p>	<p>1 with his father. He has a very strong bond with his</p> <p>2 mom. He was raised primarily by his mom and older</p> <p>3 siblings. His mom states that she stands ready to help</p> <p>4 him in any way that she can and she believes that this</p> <p>5 behavior was completely out of character for him.</p> <p>6 He left home at age 19 to work full time. He's</p> <p>7 a graduate from Capitol High School in 2010. He has one</p> <p>8 semester; although, he didn't do very well, but one</p> <p>9 semester at BSU. He has job skills in customer service,</p> <p>10 landscaping, photography developing and maintenance, and</p> <p>11 he formally worked for U-haul, Albertsons and Walgreens</p> <p>12 locally.</p> <p>13 He does have some substance-abuse history,</p> <p>14 particularly, with marijuana and alcohol. He believes</p> <p>15 that he completed a two-month outpatient rehab program</p> <p>16 to address those issues, although, it's not referenced</p> <p>17 in the PSI where that occurred.</p> <p>18 According to Dr. Johnston, Mr. Melendez agrees</p> <p>19 that he manipulated his victim and that he probably</p> <p>20 humiliated her. He agrees that he was wrongfully</p> <p>21 infatuated with her and that he let himself slipped.</p> <p>22 His MPI II results were not reflected, according to Dr.</p> <p>23 Johnston, of negative attitudes toward treatment. He</p> <p>24 presented with a low severity of sexual issues as</p> <p>25 identified in his DSM V diagnosis. Dr. Johnston rates</p> <p style="text-align: center;">22</p>
<p>1 him as a moderate risk to re-offend overall and that he</p> <p>2 is at the opportunistic end of the spectrum rather than</p> <p>3 a predatory end of the spectrum with respect to this</p> <p>4 type of behavior.</p> <p>5 His potential for future physical force and</p> <p>6 restraint seem low. He also characterizes him as</p> <p>7 moderately amenable to treatment. At least as a minimal</p> <p>8 as most sexual offenders would be, and, once again, we</p> <p>9 appreciate that this case was resolved as a felony</p> <p>10 injury to child rather than it's a sexual abuse of a</p> <p>11 minor case, so he will not have to register as a sex</p> <p>12 offender for life.</p> <p>13 I know the state's asking for 1 plus 7 for 8.</p> <p>14 I'm going to ask the court for 1 plus 4 for 5 with a</p> <p>15 probation recommendation, and he's done a lot of time in</p> <p>16 jail already, Judge, and he is an inmate worker, so I'm</p> <p>17 going to ask the court to consider credit for time</p> <p>18 served and let him do whatever treatment the court's</p> <p>19 going to impose upon him out of custody. Thank you.</p> <p>20 THE COURT: Mr. Melendez, is there anything that</p> <p>21 you would like for me to consider?</p> <p>22 THE DEFENDANT: Yes.</p> <p>23 Your Honor, you know, I take this very</p> <p>24 seriously. The charges brought against me are quite</p> <p>25 devastating, and, you know, I've been, since the</p> <p style="text-align: center;">23</p>	<p>1 occurrence happened, I've been on a path of changing</p> <p>2 that behavior. And I was doing quite well, I believe,</p> <p>3 and, until about when the warrant came out for me</p> <p>4 mid-April, and everything I answered in that was taken</p> <p>5 completely seriously.</p> <p>6 With the anti-social and narcissistic, the</p> <p>7 reckless disposition, anti-social lifestyle and poor</p> <p>8 impulse control, I'm at a loss of words as to why that</p> <p>9 is. It seems that my answers weren't taken seriously,</p> <p>10 but, you know, I consider myself a student of</p> <p>11 philosophy, and the one I adhered to most is the same</p> <p>12 one that Marcus Aurelius adhered to and, before him</p> <p>13 depicted as, and that is stoicism and, you know,</p> <p>14 stoicism teaches one that anger resides from within and</p> <p>15 external things have no effect on one's emotions, only</p> <p>16 your perception of that which is external, and, since</p> <p>17 one has no control over external things, emotions are</p> <p>18 formed, opinions from within, and with God-given reason</p> <p>19 and which one can perceive as fact. You know, stoicism</p> <p>20 tends to teach this. You know, I'm the captain of my</p> <p>21 ship. I'm the master of my soul.</p> <p>22 And, you know, contrary to the examiner's notice</p> <p>23 I have difficulty with emotional awareness, I, in fact,</p> <p>24 believe am extremely aware of my emotions, and I'm aware</p> <p>25 that I only myself have control over that. I, you know,</p> <p style="text-align: center;">24</p>

APPENDIX B

1 I know what I did was wrong, and, in hindsight, it makes
2 me, you know, it makes me sick that I let down a lot of
3 my family.

4 And, you know, I do have a big family and a
5 nephew who just, what, 14 months old that I want to be a
6 part of his life. I want to be able to go to parks. I
7 want to be able to ride down the Greenbelt. I don't
8 believe that I pose a risk to re-offend because I know
9 myself, and I won't allow that to happen.

10 And, you know, I really believe in the goodness
11 of people, and I love everybody unconditionally, and,
12 you know, I was in a bad situation. I slipped, and, you
13 know, but I believe people slip, but they can get back
14 up, and I believe that I'm on that track to do that.

15 I'm saddened that I'm in here, not being able to
16 be with my family, to enjoy life, to, you know, to feel
17 the grass, the sunshine, the river. You know, I feel
18 like a sex offender probation would just kill my spirit
19 in a way, and I, you know, I really hope that your
20 judicious decision is well-informed, as I'm sure it is,
21 and I really am, yeah, sorry for all the pain that I've
22 caused and wish that it wouldn't have happened, and I
23 never plan to do this again at all, whatsoever.

24 And, you know, I don't want to be labelled a sex
25 offender. I don't want to be labeled anything like

25

1 is important until you can obtain the treatment that I
2 think is very necessary.

3 Now, you've said the psychosexual evaluation
4 killed your spirit. I'm certainly hoping that it pruned
5 a significant portion of it. I'm not so sure from your
6 comments that it did, but no Internet access is not a
7 human basic right. Doing what you want, thinking about
8 what you want and texting those thoughts to other people
9 is not a basic human right and remaining in the
10 community is not a basic human right. So I think that
11 you need to understand those and understand the terms
12 and conditions of probation because if you do not
13 understand them and you are not willing to follow them,
14 then, you certainly need to let me know because I'll
15 be -- my sentence.

16 In this case, I'm going to impose a judgment of
17 conviction with 1 year fixed, 7 years indeterminate for
18 a total of 8 years. I'm going to order a fine of \$500.
19 I'm going to order court costs.

20 Is there a request for restitution?

21 MS. SLAVEN: No, Your Honor.

22 THE COURT: So there was no counseling or
23 anything?

24 MS. SLAVEN: No, Your Honor.

25 THE COURT: I'm going to order public defender

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1 that, to have a sex crime or any kind of felony over my
2 head and because it carries, you know, ramifications for
3 the rest of my life, and I just, yeah, I just want to be
4 there for my family. I want to be a part of my nieces
5 and nephews' lives and be able to continue my education
6 even though I'm not in school or anything.

7 And, especially, with the Internet, you know,
8 information superhighways, you know, to be denied access
9 to that is, which I believe is a basic human right at
10 this point in time, would be quite harsh in my opinion,
11 but that's pretty much all, Your Honor. Thank you.

12 THE COURT: Does either party have any legal
13 cause why sentence cannot be imposed?

14 MS. SLAVEN: No, Your Honor.

15 MR. STEVELEY: None known, Judge.

16 THE COURT: Mr. Melendez, I've considered this
17 case under the same factors I consider in every case and
18 that's the protection of society, the deterrence of
19 crime, the rehabilitation of the offender as well as
20 punishment, and I've considered it under the criteria
21 under 19-2521 for imposing probation or imprisonment.

22 Mr. Melendez, this is not about you. Quite
23 frankly, you are here because you committed a crime, and
24 my sentence reflects the fact that there is a
25 significant component of protection of the society that

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1 reimbursement of \$250 in this case. I'm going to order
2 court costs in the judgment of conviction. I'm going to
3 order up to \$100 for the presentence investigation, and
4 you'll have to submit a DNA sample and a right
5 thumbprint for the DNA database and pay \$100 restitution
6 for that. I am going to place you on probation for 8
7 years, so that will begin today. It will end at
8 midnight on July 22 of 2023.

9 As a condition of probation, by accepting these
10 conditions, you're accepting each term that are
11 contained in the conditions of probation, and, in your
12 case, it is a five pages of conditions.

13 Now you read and understand English; is that
14 correct?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: So I'm not going to read each one to
17 you. I will note that the fifth pages is actually the
18 Idaho Department of Corrections Sexual Offender
19 Agreement of Supervision. I know that you are not a sex
20 offender for this particular offense, so I've removed
21 the requirement that you register as a sex offender.
22 You're not required to register as a sex offender, but
23 you are required to attain much of that treatment, and
24 it will curtail many of your behaviors until you have
25 actually effectively engaged in that treatment for the

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1 purposes of protection of society, and so I do find that
2 these conditions are very important for the
3 rehabilitative purposes to allow you an opportunity for
4 the rehabilitation but also to protect society at the
5 same time.

6 I'm going to require you to serve 180 days in
7 the Ada County Jail. Zero of that is suspended, and
8 you'll get credit of time served of 86 days. I'm not
9 going to give you any options in serving that jail time;
10 although, I have indicated that the court will consider
11 furloughs for psychosexual treatment while in the jail
12 because I would like to see you start that treatment
13 while you are in a confined setting to be sure that you
14 will actually will meaningfully engage in that
15 treatment. By accepting these conditions, you're also
16 accepting an additional 90 days in the jail at the
17 discretion of your probation officer where the probation
18 officer's not required to get the court's permission.
19 If you're not following your conditions of probation,
20 they can place you in jail, send a report to the court
21 and the parties, and it can be reviewed from there, but
22 they're not required to get the court's permission in
23 advance.

24 When you are released from jail, you have to
25 report to 10221 West Emerald Street, Boise, Idaho, on

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1 romantic relationships with anyone that has children
2 under the age of 18, and I would plan to leave that in
3 place until you can actually demonstrate that you are
4 successfully engaging in that sex-offender treatment
5 program, because, at this point, I'm not sure that you
6 truly understand the risk and the devastation of the
7 conduct that you were engaged in.

8 It seems to me that your view is, I didn't
9 actually follow through with it, so what's the harm?
10 And I think that you are absolutely incorrect of
11 understanding the danger of that type of behavior with
12 minors, and I want to make sure that you understand
13 that, and I think that the treatment you have available
14 to you through that psychosexual treatment, hopefully,
15 will allow you to gain more insight.

16 I am going to provide you the opportunity to do
17 that in the community, but I think it is absolutely
18 critical to your success on probation that you engage
19 and successfully complete that program.

20 Now, Mr. Melendez, these are the final
21 conditions of probation. I'll give you the opportunity
22 to review those with your counsel present, so, if you
23 have any questions about any of those terms, please, let
24 me know, and I'll recall your case, and we'll discuss
25 those.

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1 your next business day after release from incarceration.
2 If they've not taken the DNA sample by that time, you
3 have to submit a DNA sample, or it will be a new felony.

4 I am ordering Level I outpatient substance-abuse
5 treatment. I'm going to order a specialized
6 sex-offender treatment program approved by your
7 probation officer as in item 13n of the sex-offender
8 agreement, and it can include a penile plethysmograph
9 and polygraph in the course of your treatment.

10 You cannot possess or use marijuana even in
11 states where it is legal while you are on probation, and
12 you are not to associate with R.G., the minor child
13 victim, unless specifically approved by your probation
14 officer and no contact means no contact directly,
15 indirectly, through third persons, by mail, by phone.
16 No contact over the Internet is no contact at all. I'm
17 also entering an amended no contact order with no
18 exceptions, so it will extend until July 22 of 2023, and
19 this makes it a separate criminal offense if you have
20 contact with her.

21 I'm also restricting your access to minors under
22 this agreement where you cannot have any access with
23 anyone under the age of 18 unless it's approved by a
24 chaperon that's approved by your probation officer. I'm
25 also not going to permit you to have any sexual or

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1 Now, Mr. Melendez, this is a final judgment of
2 this court. You do have the right to appeal to the
3 Idaho Supreme Court. The time for taking an appeal is
4 42 days from the date the judgment is made and filed.
5 You may be represented by counsel in bringing that
6 appeal. If you cannot afford to hire an attorney for
7 the appeal, one will be provided to you at public
8 expense if you're an indigent person and that would also
9 include the cost of the appeal.

10 I believe the parties have returned the
11 sentencing materials, so those will be sealed in the
12 court file under Idaho Court Administrative Rule 32.

13 So, if you have any questions about these
14 conditions, Mr. Melendez, please, let Mr. Steveley know,
15 and I'll recall your case. All right. Thank you.

16 MR. STEVELEY: Thanks, Judge.
17 (Proceedings concluded.)
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